THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20338 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the 1st respondent-Bank in initiating the proceedings in Crl.M.P.Nos 98 to 107 and 109 of 2006, on the file of the court of the Chief Metropolitan Magistrate, Cyberabad under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), is arbitrary and illegal and violative of Articles 14, 21 and 300 A of the Constitution of India; and consequently, to direct the 1st respondent to pay the petitioner the balance amount pursuant to the amounts sanctioned by the 1st respondent-Bank under term loan agreements dated 16.9.2002.

In the affidavit filed in support of the writ petition, it is stated that the petitioner-Company after obtaining necessary building permit, constructed apartments at premises bearing Municipal No.42-22 in S.Nos.353/1, 353/3 & 353/4 of Moula Ali village, Malkajgiri mandal, Ranga Reddy District, which are known as *Susilpa Hills*. It is further stated that respondents 2 to 12 and five others, totaling 16, purchased flats in the complex constructed by the petitioner-Company. The respondents 2 to 12 for the purpose of sale consideration availed housing loan of Rs.6.00 lakhs each from the 1st respondent-Bank vide loan agreements dated 16.9.2002. It is alleged that on the assurance given by the 1st respondent-Bank, the petitioner-Company sold unfinished flats to respondents 2 to 12 on receipt of Rs.3.50 lakhs each from respondents 2 to 12. It is claimed that the 1st respondent-Bank assured the petitioner-Company that the mortgage of unfinished flats in favour of the 1st respondent-Bank would be subject to the lien of the petitioner for the remaining amount of Rs.2.50 lakhs from each of

respondents 2 to 12, towards sale consideration. It is also claimed that the initial payment of Rs.3.50 lakhs each on behalf of respondents 2 to 12 was disbursed by the 1st respondent-Bank directly to the petitioner-Company and, accordingly, the petitioner-Company executed registered sale deeds in favour of respondents 2 to 12. Subsequently, petitioner-Company completed construction of flats and requested the 1st respondent-Bank to pay the balance amount. However, the 1st respondent-Bank did not disburse the balance of Rs.2.50 lakhs each on behalf of respondents 2 to 12. On the other hand, the 1st respondent-Bank initiated proceedings under the Act against respondents 2 to 12 alleging that they committed default in repayment of the loan amounts. Pursuant thereto, the 1st respondent-Bank filed Criminal M.P.Nos.98 to 107 and 109 of 2006 before the Chief Metropolitan Magistrate, Cyberabad under Section 14 of the Act for taking physical possession of the flats. Aggrieved by the said action of the 1st respondent-Bank, this writ petition is filed.

The learned counsel for the petitioner vehemently contended that the 1st respondent-Bank having agreed to pay the petitioner-Company an amount of Rs.6.00 lakhs each on behalf of respondents 2 to 12, is estopped in initiating the proceedings under the Act, to take possession of the flats in question. The learned counsel submitted that the petitioner-Company has not handed over possession of the flats to the respondents 2 to 12 and a balance amount of Rs.2.50 lakhs each, is still due from them, out of the loan amount of Rs.6.00 lakhs sanctioned by the 1st respondent-Bank. The learned counsel contended that the petitioner-Company has got lien over the flats in question and, therefore, the 1st respondent-Bank is not entitled to take possession purportedly in exercise of the rights conferred under the Act.

At the outset, it is to be noted that the copies of the sale deeds in favour of respondents 2 to 12, in respect of the respective flats

purchased by them, reflect that the total sale consideration is only Rs.3,50,000/-, which was admittedly received by the petitioner-Company. No material has been placed before this Court to establish the plea that the total sale consideration is Rs.6.00 lakhs and that the petitioner was assured by the 1st respondent-Bank that the mortgage and sale would be subject to the lien of the petitioner for realization of the remaining amount of Rs.2.50 lakhs each, from the respective respondents 2 to 12.

It is clear from the material on record that the housing loans availed by the respondents 2 to 12 are secured by the mortgage of the flats in question and that respondents 2 to 12 having availed the loan facility, committed default in payment of monthly instalments. It is also clear that though notice under Section 13(2) of the Act was published on 10.11.2004, the respondents 2 to 12 failed to respond and on the other hand, they resisted taking over possession of the secured assets. Hence, the 1st respondent-Bank filed separate petitions under Section 14 of the Act against respondents 2 to 12, in which the learned Chief Metropolitan Magistrate passed orders appointing an Advocate-Commissioner to take possession of the flats in question long back. Except the statement in the affidavit no other material is placed before this Court that the petitioner is still continuing in possession of the flats sold to the respondents 2 to 12.

At any rate, since the petitioner is not a party to the loan transactions between the 1st respondent-Bank and respondents 2 to 12, there is no privity of contract between the petitioner-Company and the 1st respondent-Bank and this writ petition seeking to interdict the proceedings under the Act appears to be misconceived.

The writ petition is devoid of any merit and it is hereby dismissed. However, since Section 17 of the Act provides filing of appeal by **any person aggrieved**, by any of the matters referred to in Section 13(4) of the Act, taken by the secured creditor, it is made clear

that this shall not preclude the petitioner to work out the remedy under Section 17 of the Act, if so advised.

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(G. ROHINI, J.)

29th September, 2006.
Kgr.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20338 OF 2006

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29th September, 2006

Between:

M/s Susilpa Builders and Planners Pvt
Ltd., Banjara Hills, Hyderabad, represented
By its Managing Director P.S. Bose. .. Petitioner.

And

Andhra Bank, Ammepet Branch,
Hyderabad, represented by its Branch Manager
and others. .. Respondents.

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WRIT PETITION No.20338 OF 2006

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